(1930) 12 PAT CK 0004

In the Patna High Court

Sunder Lal — APPELLANT

Vs

Commissioner of Income Tax — RESPONDENT

Date of Decision : 03-12-1930

Acts Referred:

Income Tax Act, 1961 — Section 22(2), 22(4), 63(1)

Citation : AIR 1931 Patna 282

Hon'ble Judges : Courtney-Terrell, C.J;James, J

Bench : Full Bench

Judgement

Courtney-Terrell, C.J.—Under the direction of this Court the Commissioner of Income Tax has stated a case in which the following are material statements of fact. The assessees are a Hindu undivided family carrying on business of money lending at Bettiah, the principal place of business being in Motihari. The notice u/s 22, Sub-section (2), Income Tax Act, was issued by the Income Tax Officer and was served by the peon at the principal place of business at Motihari and was accepted by the Gomashta of the firm named Narain Ram. No return was received, and on 29th August a notice u/s 22, Sub-section (4), to produce accounts was issued by registered post and on that date Narain Ram appeared with a petition for two months further time on the ground of the absence of the maliks. The maliks themselves are resident within the jurisdiction of the Income Tax Officer for Motihari. The Income Tax Officer refused further time, but Narain Ram refused to sign the order sheet acknowledging the order fearing, as he said, that he would lose his service. Then on 30th September an assessment was made summarily u/s 23, Sub-section (4). The application u/s 27 was made for reopening the assessment and then they sought to excuse themselves for not having filed a return by pleading that Narain Ram had been ill and had failed to communicate the receipt of the notice u/s 22, Sub-section (2), to them and that they had been absent at the time on business and they said that the failure to make a return was not deliberate. The Income Tax Officer would not accept the plea, and there was an appeal to the Assistant Commissioner of Income Tax, and in the petition to the Assistant Commissioner the assessees pleaded that they had not been informed of the receipt of the notice by Narain Ram. But at the hearing of the appeal learned Counsel on behalf of the assessees took the additional ground that the service u/s 22, Sub-section (2), was not valid because no written authority had been given to Narain Ram by the assessees to accept service. Under the direction of the High Court the Commissioner stated the following questions:

(a) Whether or not notices u/s 22 are to be served personally on the assessees, and

(b) Whether the said notice served on a servant who is not authorized on that behalf was validly served.

2. The Commissioner however went on to state that it had been found as a fact by the Assistant Commissioner that Narain Ram was in fact authorized to accept the notice for the year in question and he recites the evidence upon which the finding was arrived at. But Mr. Jayaswal on behalf of the assessees has raised this point. He says, first that notwithstanding the finding of fact the Income Tax law demands that the service of a notice u/s 22, Sub-section (2), Income Tax Act, must be personal and that there is no provision for what he terms vicarious service. He relies for that purpose on Section 63, Sub-section (1), Income Tax Act, which is as follows:

A notice or requisition under this Act may be served on the person therein named either by post or, as if it were a summons issued by a Court, under the Code of Civil Procedure, 1908,

and he relies also on Section 22, Sub-section (2), which contains the words:

to render such person liable to Income Tax, the Income Tax Officer shall serve a notice upon him,

and contends that the effect of reading these two sections combined is that Section 63, although it does in fact permit notice by post and although it permits the service of notice as if it were a summons under the Code of Civil Procedure, is limited to personal service unless the alternative of service by post is adopted. For the purpose of deciding whether that view is right it is necessary to turn to the CPC and the orders made Under it in order to ascertain what are the provisions for the service of summons under that Code. Now Order 5, Rule 12, that is Section 75 of the earlier Code, says:

Wherever it is practicable service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

3. The argument of Mr. Jayaswal amounts to this: that in applying the provisions of Order 5, Rule 12, one must ignore everything except the provision for service on person. To take that view would stultify the reference to the provisions for service of summons under the Code of Civil Procedure.

4. Now the second point raised is this. It is pointed out that Order 3, Rule 2, which in my opinion only deals with the circumstances in which the positive act of an agent is to be attributed to the principal provides that the acts by the agents of parties bind the parties in two cases: (a) when the person holds a power-of-attorney, authorizing him to make and do such appearances, applications and acts on behalf of such parties. It is of course not contended in this case that the agent was authorized by a power-of-attorney or otherwise as provided by paragraph (a); but para (b) states that the act of the agent is also to bind the principal if in the case of the principal''s absence from the local limits of the jurisdiction of the Court the agent carries on trade or business in his name, provided that no other agent was expressly authorized to do the acts. In that case also the act of the person so carrying on trade or business in the name of the principal is to bind the principal. Rule 13, Order 5, deals with the case in which service upon an agent is to be deemed service upon the principal out of the jurisdiction and provides that:

In a suit relating to any business or work against a person who does not reside within the local 1 mils of the jurisdiction of the Court from which the summons is issued, service on any manager or agent, who at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

5. That is to say, there are two rules which deal with the way in which persons outside the jurisdiction can be affected by the acts of their agents. Order 3, Rule 2, deals with the way in which they are to be bound by the positive acts of the agent, and Order 5, Rule 13, provides that they are to be bound by acceptance of service by the agent. Both of those rules deal only with the case of persons outside the jurisdiction. Order 3, Rule 3, however, deals with the case of the service of process in all circumstances and says, first, that:

Processes served on the recognized agent of a party shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs,

and Sub-rule (2) says that:

The provisions for the service of process on a party to a suit shall apply to the service of process on his recognized agent.

6. Now in this case the finding is most distinct that this is a case of a business being carried on and there is a finding that the person who in fact accepted service is the recognized agent of the principal. There has been a contention that the provision of Order 3, sub-R (2), limits the liability of the principal for acts of recognized agents only to cases in which the principal is a resident outside the limits of the jurisdiction, but to my mind that argument is not tenable. In the first place Order 3, Rule 2, is only dealing with the specific liability of a, principal who is resident outside the jurisdiction for the positive acts, that is to say "appearances, applications and acts" performed by his agent. It does not deal with the liability of the principal to be bound by the acceptance of service by the

agent; and if in the case of a business, where the business is carried on in the name of the principal by some body, then whether that principal is or is not resident within the local jurisdiction, in my opinion the service upon the recognized agent is good service upon him. That point however, is not vitally material to the decision of this case, although it has been argued be cause the finding of fact in this case is that the agent was authorized to accept Income Tax notices. As I have said, the finding is fully justified.

7. But it is necessary for the consideration of the second question in its present form:

Whether the said notice served on a servant who was not authorized in that behalf was validly served.

8. That question which it is said would seem, having regard to the finding of fact, to be unnecessary in the case, was directed to be formulated by the Court and that is why I have referred to these considerations. If the authority can be implied from the nature of the work carried on by the agent on behalf of his principal it is good service and in the case of a recognized agent carrying on business in the name of the principal that would to my mind imply authority to accept notices of this kind, because the acceptance of notice is a matter which is connected with such trade or business.

9. I would therefore answer the first question in the negative, and the second question in view of the finding of fact does not arise. The assesses will pay Rs. 200 as costs.

James, J.

10. I agree.

